

E-Filed 12/28/11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No. CR 11-0488 RS
)	
v.)	STIPULATED INTERIM
)	PROTECTIVE ORDER
EAGLE EYES TRAFFIC INDUSTRIAL)	
CO., LTD.;)	
E-LITE AUTOMOTIVE, INC.;)	
HOMY HONG-MING HSU; and)	
YU-CHU LIN, aka David Lin,)	
)	
Defendants.)	
_____)	

WHEREAS a superseding indictment has been returned in the above-captioned criminal case and defendants EAGLE EYES TRAFFIC INDUSTRIAL CO., LTD.; E-LITE AUTOMOTIVE, INC.; and HOMY HONG-MING HSU have appeared to answer the charges (collectively, the “Defendants”);

WHEREAS the United States and the Defendants have a duty to provide discovery in this matter;

STIPULATED INTERIM PROTECTIVE ORDER
CR 11-0488 RS

1 WHEREAS during the course of such discovery, some of the documents produced by
2 the United States or the Defendants may contain information that could be considered to be
3 confidential information, proprietary information, "trade secret" information (within the
4 meaning of 18 U.S.C. § 1839(3)) or grand jury material, including but not limited to
5 information and material belonging to third parties;

6 WHEREAS the United States and the Defendants deem it appropriate to provide for
7 the protection of such Confidential Material in a Stipulated Interim Protective Order, (a) with
8 the understanding that nothing herein constitutes any agreement or creates any presumption
9 regarding whether any designated Confidential Material is in fact eligible for protection from
10 disclosure, such as in fact constituting "trade secret" information within the meaning of 18
11 U.S.C. § 1839(3); (b) with the understanding that nothing herein shall be deemed to serve as a
12 basis or precedent regarding the appropriateness of a protective order with respect to materials
13 that may be subpoenaed from third parties in the future by the Defendants or the United
14 States; and (c) preserving the rights of the United States and the Defendants to challenge any
15 designations of Confidential Material at a later time;

16 WHEREAS the United States and the Defendants wish to begin the process of
17 allowing each other to become familiar with the Confidential Material, the United States and
18 Defendants have agreed to this Stipulated Interim Protective Order superseding a similar order
19 entered by the Court on August 19, 2011, with the understanding that it may be subsequently
20 modified in such a way as the United States and the Defendants may agree, or in the absence
21 of such agreement, as the Court may order;

22 Accordingly,

23 IT IS HEREBY STIPULATED AND AGREED by and between the United States and
24 the Defendants, and their respective counsel, that the following definitions and procedures will
25 govern the designation and handling of Confidential Material received by the Defendants from
26 the United States and by the United States from the Defendants, while reserving for a future
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1 time the question of how such materials and information shall be handled during pre- or post-
2 trial hearings and at trial.

3 1. Definitions:

4 a. The “Parties” or “Party” shall refer to the United States and the
5 Defendants, and their counsel.

6 b. “Confidential Material” shall mean the following Discovery Material:
7 information that the Parties contend has been kept secret, is confidential or proprietary
8 information, is a trade secret within the meaning of 18 U.S.C. § 1839(3), or is grand jury
9 material, including but not limited to (a) transcripts of grand jury testimony, (b) immunity or
10 leniency agreements, (c) reports prepared by federal law enforcement agents and employees
11 such as Federal Bureau of Investigation Forms 302 and witness interview memoranda, and (d)
12 documents produced pursuant to, or voluntarily in lieu of, a grand jury subpoena;

13 c. “Discovery Material” shall mean all materials received by the
14 Defendants from the United States or received by the United States from the Defendants
15 pursuant to their respective discovery obligations in the above-captioned case.

16 2. Each Party shall designate in writing Discovery Material it produces, or has
17 produced, as Confidential Material to the extent that the Party believes in good faith that the
18 information or material is Confidential Material as defined in ¶ 1(b) above. Whenever
19 possible, the Parties shall indicate whether particular items of Discovery Material are being
20 designated as Confidential Material at the time that such Discovery Material is produced.
21 Computer memory storage materials such as diskettes, hard drives, or other memory media
22 containing Discovery Material deemed by the Parties to be Confidential Material shall be
23 labeled on the outside of the media as “CONFIDENTIAL.” The Parties shall maintain
24 unlabeled, or “clean,” copies of any Discovery Material that it has labeled “CONFIDENTIAL”
25 under this Stipulated Interim Protective Order for the future use by the Parties in subsequent
26 proceedings.
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1 3. Confidential Material produced by the United States and provided to
2 defendants may be disclosed to each individual defendant, to the attorneys and officers of the
3 corporate defendants responsible for overseeing or making decisions with respect to this
4 lawsuit, to each defendant's attorney, and to personnel working on this case under the
5 direction of such attorney, including but not limited to employees and other attorneys in such
6 attorney's law office, interpreters, translators, investigators, paralegals, and secretarial and
7 clerical staff. This prohibition does not extend to the Party's showing of Confidential Material
8 to potential witnesses and their counsel, provided that those witnesses do not retain the
9 Confidential Material, unless the document was obtained from that witness. In the event that
10 the Parties wish to consult or retain an expert regarding these Confidential Materials, the
11 procedure for doing so is addressed in ¶ 8 of this Stipulated Interim Protective Order. All such
12 Confidential Material shall be used solely for the purpose of conducting pretrial, trial and
13 appellate proceedings in this case and for no other purposes whatsoever, and shall not be used
14 for the economic benefit of any Party or for the benefit of any third party.

15 4. Before a Party may disclose Confidential Material that it has received as
16 Discovery Material to anyone other than an individual described herein in paragraphs 3 or 8,
17 counsel for the Party seeking to disclose must provide written notice to the other Party
18 ("Notice of Intent to Disclose") at least seven business days ("business days" as used herein
19 being exclusive of weekends and Federal holidays) in advance of disclosure in order to
20 provide the other Party with an opportunity to object. If an objection is made, the Party
21 seeking to disclose shall have five business days to respond. If no agreement is reached
22 between the Parties, the Party seeking to disclose may apply to the Court for appropriate relief,
23 with copies of such motion being served on counsel for the other Party. Any such application
24 or supporting document shall be filed under seal. The Party seeking to disclose may include
25 as an attachment to such a motion an explanation by any third party possessing a proprietary
26 interest in the confidential material articulating any concerns that that person may have with
27 the disclosure of Confidential Material. Once an objection has been made, no Confidential
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1 Material may be disclosed unless and until the objection has been resolved or ruled upon by
2 the Court.

3 5. Absent further order of this Court, the recipient of any Confidential Material
4 produced as Discovery Material shall not further disclose such Confidential Material to any
5 individual or entity, other than to an individual or entity described herein in paragraphs 3 or 8.
6 Should the Defendants or the United States receive a subpoena, document request, civil
7 investigative demand, or like request as part of a judicial or administrative proceeding, such
8 Party shall provide written notice within seven business days to the other Party. The Parties
9 shall meet and confer regarding an agreed-upon response to such request. If no agreement is
10 reached, the Parties may independently apply to the Court for appropriate relief. The recipient
11 of any Confidential Material that is provided under this Stipulated Interim Protective Order
12 shall keep such information in a manner reasonably intended to preserve and maintain the
13 confidentiality of the information and shall not disclose such information to any individuals
14 except as authorized by this Stipulated Interim Protective Order.

15 6. Nothing herein shall prevent the Parties from using, referring to, or reciting
16 from the Confidential Materials any information contained in such Confidential Material in
17 connection with pleadings or motions filed in this case. When made an exhibit or attachment
18 in connection with pleadings or motions filed in this case, Confidential Material need not be
19 filed under seal, unless otherwise ordered by the Court.

20 7. Should either of the Parties dispute the propriety of any designation of
21 Discovery Material as Confidential Material, that Party shall serve notice in writing on the
22 Party that produced the discovery. Within seven business days of receiving the notice, that
23 Party shall respond to the notice in writing. If, after seven business days from the date the
24 response is served, the Parties are unable to resolve their dispute, either the United States or
25 the Defendants may apply to the Court for resolution. Any such dispute or pendency of such
26 motion shall not be grounds for a refusal to produce Confidential Materials. During the
27 pendency of the dispute and any court resolution thereof, including but not limited to an
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1 appeal of the Court's decision on such motion, the designated Confidential Material should be
2 treated as Confidential Material and shall be covered by the provisions of this Stipulated
3 Interim Protective Order. The Parties understand that, as this Stipulated Interim Protective
4 Order is primarily intended to facilitate pretrial discovery, the recipient of material designated
5 as "confidential" may choose not to formally challenge the producing Parties' "confidential"
6 designation at this stage of the proceedings. Such a failure to challenge the confidential
7 designation does not constitute a waiver of either the ability to challenge that confidential
8 designation or the ability to contest that certain portions of designated confidential material
9 constitute Confidential Material.

10 8. To assist in reviewing the Confidential Material and preparing for trial, any
11 expert or consultant retained by any Party at any time shall execute an Acknowledgment
12 (attached herein), which shall be retained by counsel for the Party. The opposing Parties will
13 not be provided with a copy of the Acknowledgment(s) signed by the expert(s) or
14 consultant(s), and the identity of the expert(s) shall not be disclosed except to the extent that
15 such disclosure is required by the Federal Rules of Criminal Procedure. The Parties retain the
16 right to request that the Court authorize disclosure of such Acknowledgement(s). Nothing in
17 this paragraph relieves any Party of the discovery obligations contained in the Federal Rule of
18 Criminal Procedure, nor does any Party waive any rights thereunder by entering into this
19 Stipulation.
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21 9. The Discovery Material that a Party receives shall not be used in any civil
22 litigation, unless such material was produced or received in such civil litigation. Furthermore,
23 except as provided herein, the Discovery Material received by Defendants shall not be
24 provided to anyone who is not a Party to this Stipulated Interim Protective Order, including
25 but not limited to any person who is, or subsequently becomes, a co-defendant in CR 11-0488
26 RS.

27 10. None of the individuals or entities that may have instituted civil actions for
28 damages for asserted aftermarket auto lights collusion is a Party to the above-captioned case.

1 Where this Stipulated Interim Protective Order requires the service of notice on an opposing
2 party, this requirement does not include the service of notice on such individuals or entities, or
3 any other third party.

4 11. At the conclusion of the above-captioned case (including but not limited to any
5 post-trial proceedings, appeal or habeas petitions), the Parties agree to either destroy all
6 Discovery Material or return the Discovery Material to the producing Party, except as
7 otherwise directed by the Court.

8 12. By signing and agreeing to this Stipulated Interim Protective Order, no party
9 shall be deemed to have conceded that any Discovery Material has been properly designated as
10 Confidential Material. Moreover, failure of a party to designate Discovery Material as
11 Confidential Material at the time of production shall not be deemed a waiver of the party's
12 ability to argue at a later time that the Discovery Material in fact is Confidential Material.

13 13. Nothing in this Stipulated Interim Protective Order shall preclude any Party
14 from applying to the Court for further relief or modification. The Parties' agreement to enter
15 into this Stipulated Interim Protective Order at this time is for the purpose of pretrial discovery
16 and is not a concession by any Party that a "confidential" designation or the terms of this
17 stipulated order would be appropriate should the case proceed beyond pretrial discovery.

18 14. Nothing in this Stipulated Interim Protective Order shall prevent disclosure
19 beyond the terms of this Stipulated Interim Protective Order if the Parties consent in writing to
20 such disclosure, or if such disclosure is ordered by the Court.

21 15. Willful violation of this Stipulated Interim Protective Order may be punishable
22 by contempt of court or any other sanction or combinations of sanctions that are legally
23 available.
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1 IT IS SO STIPULATED.

2 DATED: December 28, 2011

/s/ HOWARD J. PARKER
JACKLIN CHOU LEM (CA Bar No. 255293)
MAY LEE HEYE (CA Bar No. 209366)
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Attorneys for the United States

10 IT IS SO STIPULATED.

11 DATED: December 28, 2011

/s/
BECKY WALKER JAMES
Attorney for Defendant Homy Hong-Ming Hsu

13 IT IS SO STIPULATED.

14 DATED: December 28, 2011

/s/
KENNETH JULIAN
Attorney for Defendants Eagle Eyes Traffic
Industrial Co., Ltd. and E-Lite
Automotive, Inc.

18 IT IS SO ORDERED.

21 DATED: 12/28/11



THE HONORABLE RICHARD SEEBORG
United States District Judge

ACKNOWLEDGMENT OF STIPULATED INTERIM

PROTECTED ORDER IN:

UNITED STATES v. EAGLE EYES TRAFFIC INDUSTRIAL CO., LTD.

The undersigned hereby acknowledges that he or she has received a copy of the Stipulated Interim Protective Order issued in United States V. Eagle Eyes Traffic Industrial Co., Ltd., CR 11-0488 RS (N.D. CA), has read, understands, and agrees to the terms of the Stipulated Interim Protective Order, and hereby submits to the jurisdiction of the United States District Court for the Northern District of California for the purposes of enforcement of the terms of the Stipulated Interim Protective Order and the punishment of any violations thereof.

DATED:

Signature

Street Address

City, State, and Zip Code

Area Code/Telephone Number